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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/736,067	12/15/2003	Kenji Nakamura	KODA50A.001C1	9006
20995 7590 09/10/2007 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			EXAMINER QAZI, SABIHA NAIM	
			ART UNIT 1616	PAPER NUMBER
			NOTIFICATION DATE 09/10/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
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Office Action Summary	Application No. 10/736,067	Applicant(s) NAKAMURA ET AL.	
	Examiner Sabiha Qazi	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 1-20 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

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Election/Restriction

Claims 1-20 are pending.

Summary of this Office Action dated Monday, Sept. 3rd, 2007

1. Election Restriction
2. Communication

Election/Restrictions

1. Claims 1-20 generic to the following disclosed patentably distinct species:
2. The species are independent or distinct because in producing the sponge hydrolysate, it is preferable to reduce the molecular weight of the protein lysate with protein hydrolases since the sponge protein lysate has a high molecular weight, which makes the lysate highly viscous and difficult to handle in higher concentrations. Using the abovementioned sponge protein lysate as a substrate of the protein hydrolase in this decomposition not only solves the problem of handling but the fragmentation of the molecules also provides physiologically active peptides and amino acids having cell stimulating activity or anti-cancer activity.

If proteins extracted from sponges have a high molecular weight, the cell growth stimulating effect on skin or hair is low and only a slight therapeutic effect is expected. Furthermore, these proteins have low moisture-retaining efficacy and cannot protect skin or hair. Therefore, it is preferable to reduce the molecular weight to less than 5,000, which usually requires complicated processes such as hydrolysis using proteases, and purification of an extract may be laborious. According to another embodiment of the present invention, the problem of the coloring of the hydrolysate is solved, and a hydrolysate having a molecular weight of less than 5,000 can be obtained at high yield without using a protein hydrolase.

The method may use spongin fibers obtained from sponges of *Spongia* which belongs to Porifera (hereinafter referred to as *Spongia* sponges), as the raw material. *Spongia* sponges are preferably refined to remove impurities and soils and then crushed before hydrolysis.

The Spongia sponges are soaked, with heating, in an acidic solution in which the pH is adjusted to 1 using electrolytic acidic water with a pH of less than 2.5 and an oxidation-reduction potential of more than 1,000 mV admixed with an acid to carry out hydrolysis to obtain sponge proteins having a molecular weight of less than 5,000, with light coloring. After the hydrolysis, the hydrolysate may be neutralized using sodium hydroxide and desalted using a reverse osmotic membrane or ion exchange resins.

3. The proteins extracted from sponges have a high molecular weight, their cell growth stimulating effect on skin or hair is low, and they have little therapeutic effect and low moisture-retaining effect, and thus cannot protect skin or hair. Therefore, it is preferable to reduce the molecular weight to less than 5,000, which usually requires complicated processes such as hydrolysis using proteases, and purification of an extract may be laborious. the problem of coloring of the hydrolysate is solved and a hydrolysate having a molecular weight of less than 5,000 can be obtained at high yield without using protein hydrolase. The light colored sponge protein hydrolysate obtained in the present invention can be used as a raw material having a human cell growth stimulating effect in cosmetics, medicinal products or food products.

. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species, even though this requirement is traversed. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is

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allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

4. A telephone call was made to Katsushiro Arai on 8/31/2007 to request an oral election to the above restriction requirement, but did not result in an election being made.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the

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currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Communication

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sabiha Qazi, Ph.D. whose telephone number is 571-272-0622. The examiner can normally be reached on any business day.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter, Ph.D. can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


SABIHA QAZI, PH.D.
PRIMARY EXAMINER